

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-1130

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

B
P/S

THE UNITED STATES OF AMERICA,

Plaintiff-Respondent

- against -

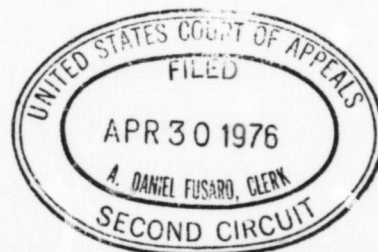
ELGIN C. COOK,

Defendant-Appellant

ON APPEAL FROM A JUDGMENT OF CONVICTION OF THE
UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF NEW YORK

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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SECOND CIRCUIT

DOCKET No. 76 - 1130

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against

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QUESTIONS PRESENTED

1. Was the Court correct in denying the Motion for mistrial and ordering the trial to proceed, when two co-defendants who had participated in Jury selection, pleaded guilty?

PRELIMINARY STATEMENT

This is an Appeal from a judgment of conviction of the United States District Court for the Western District of New York (Curtin, District Judge), entered February 23, 1976, convicting the Defendant of six counts of conspiracy and eighteen counts of mail fraud, in violation of Title 18, United States Code, Sections 371, 1341 and 1342. A notice of appeal to this Court was filed on February 23, 1976.

STATEMENT OF FACTS

The Defendant and eight others were charged in a seventy-one count indictment with conspiracy and mail fraud, covering a period 1969 through 1972.

In all, five different conspiracies were alleged, each conspiracy having several counts of mail fraud attached thereto.

When the case was called for trial on December 9, 1975, eight of the nine Defendants appeared ready for trial, the other having her matter severed, due to the fact that she was physically incapacitated (Transcript, Page 37, line 20).

Jury selection was commenced, which process consumed four hours and fifteen minutes.

Upon selection of the Jury and alternates, the Jury was excused and the proceedings adjourned until trial could commence, at a later date.

On December 15, 1975, the Defendant GEORGE RASPBERRY pleaded guilty to two counts of the indictment.

On December 17, 1975, the Defendant ROSA BELL McCLENDON pleaded guilty to three counts of the indictment.

Prior to the continuance of the trial, with the Jury absent, counsel moved for a mistrial, which Motion was denied.

The grounds for the mistrial Motion were that the Defendants who had pleaded guilty, had participated in the Jury selection and because of that fact the other Defendants' rights were compromised (Appendix 1 through 4).

POINT I

WHEN A CO-DEFENDANT, WHO HAS PARTICIPATED IN SUBSTANTIAL ASPECTS OF A TRIAL, PLEADS GUILTY DURING THE COURSE THEREOF, THE REMAINING CO-DEFENDANT SHOULD BE GRANTED A MISTRIAL.

In order to fully appreciate the thrust of this appeal, the Court must put itself in the place of a prospective juror, who learns on December 9, 1975, that this nine-Defendant action is severed as to one of the Defendants for health reasons.

When the jurors return on December 17, 1975, they learn for the first time that two other Defendants have disappeared from the case, and are advised by the Court as follows:

"There are three defendants, - I think one we have already explained, in the case of defendant Cainetta Raspberry, her case was severed. There are two

other defendants who will not be with us now, George Raspberry and Rosa Bell McClendon. Those cases, the problems involved in those cases, are not in issue before you."

(Appendix 5)

The Court, albeit at the request of counsel, has not explained why the two defendants are not present. The Jury only knows that there are "problems." The exact nature of those problems is made evident when the Defendant George Raspberry testifies in the case later on, and the fact of his plea of guilty is indicated. However, whether or not the Defendant Raspberry ever testified at all, the Jury is left with the impression, later confirmed, that Raspberry and McClendon have, indeed, pleaded guilty. These Defendants have also participated in the Jury selection. Their counsel were allowed to influence the basic composition of the jury.

In State v. Bryant, 236 N.C. 745, 73 S.E. 2d 91 (1953), a co-defendant pleaded guilty after the Court had completed the charge and the jury was starting to

leave the jury box. On appeal, the Court of Appeals of North Carolina observed that that very same co-defendant had just finished testifying to the facts of his guilt. The remaining defendant was not prejudiced since the pleading co-defendant had already confessed, and the taking of a plea was merely a formality.

In our case, however, the plea taking took place after jury selection, and prior to opening statements. The prejudice to the remaining defendants is much more severe in this case, as they have been denied the right to select a jury of their peers. How can a defendant, who has it in his mind to plead guilty at some point, give his all in the selection of a jury? He is simply biding his time, waiting for the prosecutor to make the appropriate plea recommendation. (See Appendix 7-8)

In another case, the co-defendant changed his plea to guilty in the presence of a jury, just before it was sworn. The evidence in that case showed a close association between the co-defendants, as was the case in the case at bar. In that case, the Court called

attention to the fact that the co-defendant had pleaded guilty. In the case at bar, the co-defendant himself took the stand and testified against his co-defendants.

The Court of Appeals of the District of Columbia Circuit, observed:

"In this situation, we think the effect of impressing the jury so forcibly with her plea of guilty prejudiced the appellant's right to be tried solely on the evidence against him, rather than on the admission of another's guilt."
Payton v. United States, 222 F.2d 794, 796 (D.C.Cir.1955).

There is a line of cases in this Circuit, concerning the point in issue, which rests on the principle that if proper cautionary instructions are given by the trial judge, the prejudicial effect of the fact of the co-defendant pleading guilty during the course of a trial can be minimized. See, United States v. Crosby, 294 F.2d 928 (2nd Cir. 1961), cert.den. sub. nom., Mittleman v. United States, 368 U.S. 984 (1962); United States v. Aronson, 319 F.2d 48 (2nd Cir.) cert.den. 375 U.S. 920 (1963); United States v. Dardi, 330 F.2d 316 (2nd Cir.), cert.den. 379 U.S. 845 (1964); United

States v. Kelly, 349 F.2d 720 (2nd Cir. 1965), cert. den. 384 U.S. 947 (1966); United States v. Price, 447 F.2d 23 (2nd Cir. 1971).

In Kelly, the Court made the following observation:

"It is to be noted . . . that in this case the guilty plea was not made in the presence of the jury, not were the jurors in any way apprised of the fact that it had been made."

United States v. Kelly, supra, 349 F.2d at 767.

In the case at bar, the guilty plea was also not made in the presence of the jury; however, it is clear that the jurors were apprised of that fact.

"Although taken in the jury's absence, the jury could not have been unaware of these pleas."

United States v. Dardi, supra, 330 F.2d at 333.

What difference does it make whether or not the pleas are taken in the jury's presence? The sentencing might as well have taken place in the jury's presence. Whether it be the fact of a plea or the surmise of the plea, the jury is prejudiced against the remaining co-defendants.

In the case at bar, there were insufficient cautionary instructions given by the Court. The advice that the "problems" of the other defendants were not the concern of the jury is clearly insufficient.

In this case, the selection of the Jury was a concerted effort by all parties. The possibility of prejudice to the remaining defendants by the participation in said process by the pleading co-defendants, makes the composition of the Jury less than fair, when considered as a whole. This Defendant has been denied his right to a trial by a jury of his peers due to the failure of the Court to discharge the jury as drawn. U.S. Const. Amend. VI.

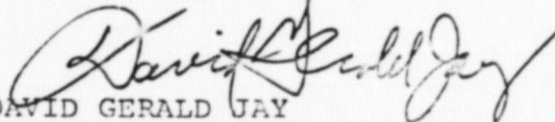
"Where a party on trial with another seeks to change his plea to guilty . . . the Court should be careful to see that such practice works no undue prejudice to the other party on trial; and it may be improper, under certain circumstances, to receive a plea of guilty from a defendant during the trial of such defendant and his co-defendant." 22 C.J.S. Criminal Law, Section 422(1), at p.1169 (1961).

It is submitted that the Trial Court failed to exercise proper care to alleviate the inherent prejudice in the co-defendants' act, and that this is such a case where a new jury should have been drawn.

CONCLUSION

The judgment of conviction should be reversed and the Defendant discharged.

Respectfully submitted,



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APPENDIX

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A-1

CF-1973-382

[illegible]

DATE	PROCEEDINGS
1973	
Dec. 27	Court assigns Atty. Patrick Baker as counsel. Deft. is released on \$3,000 recog. bond
Dec. 27	Filed \$3,000 personal recog. bond for Mary Jean Askew
1974	
Jan. 10	Determination of counsel for Elgin Cook, Kate Lee Cook and Rosa Bell McClendon. It is determined that Atty. William Sims will represent the Cooks. Court will assign Atty. for Deft. McClendon. Court will assign date for filing motions.
Jan. 11	Filed Pet. & Order for Writ of H.C. Ad Proseq.--CURTIN, J. Elgin C. Cook, ret. 1/15/1974
Jan. 11	Filed Cy. 5 of CJA-20 - Order appointing Eugene P. O'Connor, Esq., as counsel for Deft. Rosa Bell McClendon--CURTIN, J.; cy. to the Adm. office, Orig. ret. to counsel for submission of voucher.
Jan. 15	Deft. George C. Raspberry present without counsel, enters a plea of not guilty to the indictment. Court sets bail at \$5,000 recog. bond, to be posted at the conclusion of a jail sentence now being served as the result of a state conviction.
Jan. 21	Filed Cy. 5 of CJA-20 - Order appointing Joseph V. McCarthy, Esq., as counsel for Deft. George C. Raspberry, --CURTIN, J.; cy. to the Adm. office, Orig. ret. to counsel, for submission of voucher
Jan. 23	Filed Writ of H.C. Ad Proseq., executed 1/21/1974
Feb. 14	Filed Order of filing motions is granted until 2/28/1974. No further adj. shall be given unless good reason is shown in writing--CURTIN, J.
Feb. 14	Return date for motions. Adj. to 2/28/1974
Feb. 28	Proceedings before Magistrate Maxwell - Deft. Nathaniel Askew requested assignment of an attorney - Adj. to 3/5/1974 for arraignment with an attorney. Bail - \$5,000 cash or surety by relatives with property.
Mar. 1	Filed warrant - executed 2/28/1974 - for Nathaniel Askew
Mar. 4	Return date for motions. Adj. to 3/18/1974
Mar. 4	Filed \$5,000 property bond for Deft. Nathaniel Askew - Mary Askew (mother) surety
Mar. 5	Filed Cy. 5 of CJA-20- Order appointing Ronald S. Cohen, Esq., as counsel for Deft. Nathaniel Askew--MAXWELL, Mag.
Mar. 5	Deft. Nathaniel Askew being duly arraigned before the Magistrate, enters a plea of not guilty; Adj. to 4/16/1974, for motions before the Magistrate. If defense counsel wishes to join in motions with co-defts. before Judge Curtin, he may on the adj. date set by Judge Curtin.
Mar. 5	Filed Deft. George C. Raspberry's notice of motion for severance, inspect Grand Jury minutes, production, suppression, Brady material, and etc., ret. 3/25/1974
Mar. 5	Filed Deft. George C. Raspberry's demands to the U.S. Atty. XX XX
Mar. 12	Filed Ct. Steno's minutes of 3/5/1974
Mar. 18	Filed Deft. Mary Jean Askew's notice of motion & affidavit for disclosure etc., ret. 3/18/1974

CRIMINAL DOCKET

Cr-1973-382

7-10000

DATE 1974	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Mar. 18	Filed Deft. Rosa Bell McClendon, notice of motion for Bill of Particulars, to inspect & copy etc., ret. 3/18/74		
Mar. 18	Return date for motions. Govt. has received motions from defts. Raspberry, Askew and McClendon; adj. to 2/25/74 for meeting with Atty. William Sims, Govt. Attys., and Judge		
Mar. 19	Filed Notice from Atty., Eugene P. O'Connor, Atty. for Rosa Bell McClendon, that he joins in the motion made by Atty. Patrick Baker, Atty. for Deft. Mary Jean Askew		
Mar. 25	Motion by defts. for a severance. Adj. to 5/6/1974 for Govt. response to defts. motions.		
Mar. 25	Atty. Sims notifies the Court he joins-with other attys. for defts. in their motions; the Govt. to respond 4/8/1974		
Apr. 4	Filed Govt's response to certain pre-trial motions filed by the defendant, Rosa Bell McClendon		
Apr. 4	Filed Govt's response to certain pre-trial motions made by the defendant Mary Jean Askew		
Apr. 5	Filed Govt's response to certain pre-trial motions made by the Deft. George C. Raspberry--		
Apr. 8	Filed Govt's response to certain pre-trial motions filed by the defts. Elgin Cook, and Kate Lee Cook		
Apr. 8	Filed Govt's response to pre-trial motion to dismiss made by the deft. Nathaniel Askew		
Apr. 8	notice of Filed Deft. Nathaniel Askew's/motion to dismiss the indictment, etc., ret. 4/11/1974		
Apr. 17	Filed \$5,000 personal recog. bond for George Raspberry		
Apr. 18	Filed warrant for Deft. George C. Raspberry--executed 4/17/74		
Apr. 25	Filed cy. of warrant for Deft. Robert Allen Askew, executed - 5/0/1974 4/11/74		
Apr. 29	Motion by deft. Nathaniel Askew to dismiss. Adj. 5/13/1974		
May 6	Filed Deft. Nathaniel Askew's written statement in furtherance of of motion to dismiss indictment on behalf of Deft. Nathaniel Askew		
May 6	Govt's response to deft's motions. Govt. has responded - Adj. to 5/28/1974 for status report and set day for trial--		
May 28	Status Report. Adj. to 5/30/1974 at 2:30 for meeting with counsel		
June 24	Filed Pet. & Order for Writ of H.C. Ad Prosew. Curtin, J., Elgin C. Cook, for assignment of counsel		
June 27	Filed Writ of Habeas Corpus Ad Proseq., executed - 6/26/1974		
June 26	After inquiry into the financial status of Deft. Cook, the Court announced that an atty. would be appointed to represent the deft. who was then ordered ret. to Chautauqua County authorities.		

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

CR-74-244

TITLE OF CASE	ATTORNEYS
THE UNITED STATES,	For U.S.:
vs.	

(11) ELGIN C. COOK (Cts. 1, 2, 4, 6, 7, 8, 9, 12, 13, 14, 15, 18, 19, 20, 23, 36, 37, 41, 51, 52, 53, 64, 65, 68, 71); KATE LEE COOK (Cts. 64, 65); MARY JEAN ASKEW, (Cts. 1, 2, 3, 10, 13, 14, 21, 22, 24, 25, 58, 59); ROSA BELL McCLENDON, (Cts. 1, 2, 11, 13, 14, 16, 17, 30, 31, 32, 34, 35, 36, 37, 42, 43, 44, 58, 59, 60, 61, 64, 65); GEORGE C. RASPBERRY (Cts. 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 45, 46, 51, 52); CAINETTA RASPBERRY (Cts. 13, 14, 26, 27); NATHANIEL ASKEW (Cts. 1, 2); ROBERT ALLEN ASKEW (Cts. 1, 2, 5); LOUIS TOLIVER (Cts. 13, 14, 28, 29, 36, 37, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 62, 63, 64, 65, 66, 67, 68, 69, 70);

Defendant:

Conspiracy to commit offenses against the U.S., by knowingly and with intent to defraud, devise a scheme & artifice to obtain moneys from the New York State Unemployment Insurance Fund by means of the Post Office Department of the U.S., and/or the U.S. Postal Service, and in furthering such scheme or device using false & fictitious names & addresses (Cts. 1, 13, 30, 34, 36, 51, 58, 64), in vio. of Title 18, Sect. 371, U.S.C.; Using the mail in the furtherance of a scheme & artifice to defraud (Cts. 2 thru 12, 14 thru 29, 31, 32, 33, 35, 37 thru 50, 52 thru 57, 59 thru 63, 65 thru 70), in vio. of Title 18, Sects. 1341 & 2, U.S.C.; Assuming fictitious names for the purpose of carrying on a scheme & artifice to defraud, by means of the U.S. Post Office Department (Ct. 71), in vio. of Title 18, Sect. 1342, U.S.C.

Offenses: 12/1969 thru 12/1972

71 Counts

Title 18

Sections - 371, 1341, 2, and 1342

DATE	PROCEEDINGS
1974	
Sept. 12	Filed Indictment
Sept. 12	J.S. 2 made
Sept. 16	Motion for disclosure, etc. Govt informs court it has filed superceding indictment adding an additional deft., Cr-74-244. Adj. to 10/7 for any additional motions in Cr-74-244
Sept. 17	Filed \$5,000 personal recognizance bond for deft. Toliver
Sept. 17	Re: Louis Toliver. Deft. in custody on a Bench Warrant, advised the Court he has no funds to retain an atty and requested the Court to assign an atty; the Court announced an atty will be assigned. The Court entered a plea of Not Guilty, Deft was released on a \$5,000 appearance bond, bail limits were set as the Western District of NY and any travel outside the district must be by permission of the Court. Deft. advised the Court he resides at 307 Johnson St., Buffalo, has no telephone at that address but can be reached thru his mother, Ernestine Toliver at telephone 838-5816.
Sept. 19	Filed cy. 5 of CJA 20--order appointing Edward Heller as atty. for deft. Toliver.
	CURTIN, J.
Sept. 17	Govt. requests warrant to issue for deft Toliver. Issued warrant.
Sept. 20	Filed warrant executed 9/17/74
Sept. 24	Filed Ct. Steno's minutes of proceedings of 9/17/74

DATE 1974	PROCEEDINGS
Sept. 30	For arraignment. Adj. to 10/7/74 (re: Louis Toliver)
Oct. 7	Deft. Louis Toliver being duly arraigned, enters a plea of not guilty to the indictment. Adj. to 11/4 for motions
Oct. 7	Elgin C. Cook, et al - Return date for any additional motions. Govt. advises Court it has received motions from Defts.; Govt. to file answers by October 21; Adj. to Nov. 4, 1974 for any additional motions by Defts.
Oct. 15	Re: Cainetta Raspberry--for arraignment. Adj. to 10/21/74
Oct. 17	Filed deft. Elgin C. Cook's notice of motion for an order directing Dismissal of indictment, Bill of Particulars, Brady Material, etc. Hearing, Ret. 11/4/74
Oct. 21	Re: Cainetta Raspberry. Deft. present without counsel, enters a plea of not guilty to the indictment. Upon application by the deft. court will appoint counsel. Deft is released on \$2500.00 recognizance bond.
Oct. 21	Filed \$2,500.00 personal recognizance bond for deft. Cainetta Raspberry.
Oct. 21	Return date for Govt's answer to defts' motions. Adj. to 11/4/74
Oct. 24	Filed cy. 5 of CJA 20--order appointing Arthur F. Dobson, Jr. as counsel for deft. Cainetta Raspberry. CURTIN, J.
Oct. 31	Filed Deft. Kate Lee Cook's notice of motion for an order granting dismissal of indictment, Bill of Particulars, severance of trial, discovery and inspection, Brady Material, hearing, etc. Ret. 11/4/74
Nov. 4	For determination of counsel for Louis Toliver - Adj. 11/8/74 9:30 A.M.
Nov. 4	Deft. Rosa McClendon, present with counsel, requests new counsel; Court will appoint new counsel. Eugene O'Connor, Esq., is discharged as counsel in this case. Adj. 12/2/74 for Govt. to file answers to Defts. motions. All defts. who have not been arraigned, will appear Nov. 11, 1974 for arraignment on this indictment.
Nov. 8	Deft. Louis Toliver appears with counsel. Counsel moves to be relieved at Atty. for the deft. Motion granted. Atty. Edward Heller is discharged as appointed counsel by the Court. Court will appoint new counsel for the defendant. Court directs the Clerk to place on the docket the address and telephone number of Deft. Toliver: Louis Toliver, 307 Johnson St., Buffalo, N.Y., Telephone number 896-3844.
Nov. 8	Deft. Nathaniel Askew being duly arraigned, enters a plea of not guilty to the indictment. On--application of the defendant previous bail of the Deft. is revoked and the Defendant is released on \$2500.00 Recognizance bond. (Not filed in file - in hand)
Nov. 11	Re: Kate Lee Cook--for arraignment. Adj. until 11/13/74
Nov. 11	Re: Elgin C. Cook--for arraignment. Adj. until 12/2/74
Nov. 11	Re: Robert A. Askew--for arraignment. Adj. until 11/18/74
Nov. 11	Re: Louis Toliver--Court directs clerk to place the named deft. on the court docket, court to assign atty.
Nov. 11	Re: Mary Jean Askew, Rosa Bell McClendon, George F. Raspberry, Cainetta Raspberry--defts. being duly arraigned, all enter pleas of not guilty to the indictment.
Nov. 14	Filed Petition and Order for Writ of H C Ad Proseq., ret. 12/2/74 CURTIN, J. for deft. Elgin C. Cook
Nov. 18	Defts Robert Allen Askew and Kate Lee Cook being duly arraigned, both enter pleas of not guilty to the indictment. Bail to continue. Adj. to 12/2/74 at 2:00 for motions.
Nov. 19	Filed Cy. 5 of CJA-20 - Order appointing Thomas C. D'Agostino as counsel for deft. Rosa Bell McClendon--CURTIN, J.; cy. to the Adm. office, Orig. ret. to counsel for submission of voucher

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Nov. 19	Filed Cy. 5 of CJA-20 - Order appointing Robert Walsh as counsel for Deft. Louis Toliver, Curtin, J.; Cy. to the Adm. office, Orig. ret. to counsel for submission of voucher		
Nov. 29	Filed Govt's motion to move action for trial		
Nov. 29	Filed Govt's response to certain pre-trial motions filed by the deft. Robert Allen Askew		
Nov. 29	Filed Govt's response to certain pre-trial motions filed by the deft. Nathaniel Askew		
Dec. 2	Filed Govt's response to certain pre-trial motions filed by the defendant Elgin C. Cook		
Dec. 2	Filed Govt's response to certain pre-trial motions filed by the Deft. Kate Lee Cook		
Dec. 2	Return date for motions. In the case of U.S. vs. Louis Toliver, adj. to 1/6/75 for motions. In the Case of U.S. v. Cainetta Raspberry Adj. 1/6/75 for motions; Rosa Bell McClendon, Adj. 1/6/75 for motions. All cases will be heard on oral argument 1/20/1975 at 2:00 P.M.		
Dec. 2	Deft. Elgin Cook being duly arraigned enters a plea of not guilty to the Indictment.		
Dec. 5	Filed Writ of Habeas Corpus Ad Prosequendum, executed for Elgin Cook, 12/3/74		
Dec. 9	Re: Louis Toliver, Deft present with counsel. Bail to continue. Adj. to 1/6 for defense motions.		
1975			
Jan 7	Filed deft Rosa Bell McClendon's notice of motion for dismissal of indictment, order suppressing use of deft's GJ testimony, etc. ret. 1/20/75.		
Jan 6	Return date for motions. No appearances for defts. Adj. to 1/20/75 at 2:00 pm for oral argument on motions.		
Jan. 6	Filed Deft. Louis Toliver's notice of motion for disclosure, etc., discovery and inspection, production, Brady material, handwriting analysis, at Govt. expense, bill of particulars, etc. ret. 1/20/1975		
Jan. 14	Filed Govt's response to Pre-Trial motions filed by the defendant, Louis Toliver--		
Jan. 14	Filed Govt's response to Certain Pre-Trial Motions filed by Deft. Rosa Bell McClendon		
Jan 14	Filed deft' Cainetta Raspberry's notice of motion for inspection of G J minutes, Brady material, suppression of statement, etc., ret. 1/20/75		
Jan. 16	Filed Govt's response to pre-trial motions filed by deft Cainetta Raspberry		
Jan 20	Govt states they are ready for trial. Wade hearing is necessary. Def Elgin Cook and George Raspberry are to file memos by 2/18. Govt. file reply by 3/3. Any other defts who wish are to file motions to inspect Grand Jury Minutes and for dismissal of indictment by 2/18. Govt to respond by 3/3. Hearing on statements given to investigator will be on 1/31 at 10:00 am. All motions for severance are held in		

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Jan 20	abeyance.		
Jan 24	Filed Pet. & Order for Writ of H C Ad Proseq/. ret. 1/31/75		CURTIN, J.
Jan. 30	Filed subpoena Mr. Joseph Broderick, served 1/27/1975		
Jan. 30	Filed Affidavit by Roger P. Williams, AUSA, in regard to Govt's evidence in this case		
Jan. 31	Filed Cy. 5 of CJA-21 - Authorization for transcript- Cy. to the Adm. office.		
Jan 31	Hearing on statements given to Investigator James Stewart and Joseph Broderick. Court releases Patrick Baker as counsel for deft. Mary Jean Askew, upon her application for new counsel. She is to return to court Feb. 10 with an affidavit before court will appoint new counsel. Court appoints Philip Abramowitz as counsel for Kate Lee Cook, replacing Salvatore Martoche. Only left, left for this hearing is deft. Elgin C. Cook. Court orders transcript of today's hearing. When completed, court will have meeting with attys. Roger Williams, David Jay and Joseph McCarthy. Proceedings are adj. until further notice by Court.		
Feb 5	Filed cy. 5 of CJA 20--order appointing Philip Abramowitz as counsel for deft. Kate Lee Cook---CURTIN, J. (replacing Salvatore Martoche)		
Feb 6	Filed Writ of H C Ad Proseq. executed 2/4/75 for deft Elgin C. Cook		
Feb 10	Filed statement of Mary Jean Askew as to financial status, and requesting assignment of counsel		
Feb 10	Re: Mary Jean Askew--deft present without counsel. Court will appoint counsel.		
Feb 13	Filed cy. 5 of CJA 20--order appointing Stephen Lamantia as counsel for deft. Mary Jean Askew CURTIN, J.		
Feb. 18	Filed Ct. Stenographer's transcript of the proceedings held before Judge Curtin, on 1/31/1975		
Feb. 18	Filed letter to Judge Curtin, dated 2/14/1975, from Atty. Arthur F. Dobson, Jr., Esq., counsel for Deft. Caineretta Raspberry, in regard to the Court's granting counsel a one week extension to file brief		
Feb. 19	Filed Cy. 2 of CJA-21 - Authorization and voucher for transcript in the amt. of \$100; Orig. to the Adm. office for payment.		
Feb. 24	Filed Deft. George C. Raspberry's notice of motion for an order dismissing the Indictment, etc., ret. 3/3/1975		
Feb. 24	Filed Deft. Caineretta Raspberry's memorandum of Law on Deft's motion for inspection of the Grand Jury minutes and/or Dismissal of the Indictment		
Mar. 3	Filed Govt's memorandum in opposition to the motion of the deft. George C. Raspberry, to dismiss the indictment on the grounds of double Jeopardy (Caineretta Raspberry)		
Mar. 3	Filed Govt.'s memorandum of Law in opposition to defendant's motion for inspection of the Grand Jury minutes and/or dismissal of the indictment		
Mar. 3	Motion by Deft. Raspberry to dismiss the Indictment. Adj. to 3/31/75 for deft. to respond.		
Mar. 3	Return date for Govt. response to memos and response to any motions to dismiss- Defts. Raspberry- George and Caineretta have made motions to which the Govt. has responded. Adj. to 3/31/75 for further reply by defts. Court will set up another meeting with counsel--		

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Mar. 10	Filed Decision and Order that Motions by Defendants George Raspberry and Elgin Cook for dismissal on the grounds of double jeopardy -- denied; Defts.' motions for inspection of the Grand Jury minutes denied at this time on failure to show particularized need for their examination, and etc.; If counsel for George Raspberry desires additional testimony of any witness or to present any further witnesses, notice in writing shall be given to the Court not later than March 17, 1975; If either counsel for defts. Elgin Cook and George Raspberry desires to attack the voluntariness of the statements given to investigators a memorandum shall be filed not later than March 31, 1975; The Court will consider the appointment of a handwriting expert only if the name, qualifications, background and expected fee of the expert are received not later than March 31, 1975; All motions and briefs in support of the motions shall be received not later than 3/31/75; Upon receipt of the papers on 3/31/75 the Court shall file a further order relating to this case -- CURTIN, J.		
Mar. 19	Filed Deft. Cainetta Raspberry's Notice of Motion for an order granting the defendant an inspection of the Grand Jury minutes and / or a dismissal of the indictment, etc., et. 3/31/1975		
Mar. 21	Filed cv. 5 of CJA 20--order appointing Patrick Baker as counsel for Mary Jean Askew--CURTIN, J.--Nunc Pro Tunc--12/27/73 (Originally appointed by Judge Henderson in open court on 12/27/73, but appointment and voucher form was never drawn up (Cr-1973-382)) Cy. 5 filed in Cr-1973-382.		
Mar. 25	Filed Govt's response to a letter from counsel for deft. /Joseph V. McCarthy, dated 3/18/75		
Mar. 25	Filed Govt's further response to to motion of defendant Cainetta Raspberry, made 3/18/1975		
Mar. 31	Re: Cainetta Raspberry--Motion to dismiss indictment. Denied.		
Mar. 31	Discussion of various motions by certain defts. Hearing on 4/11 at 2:00		
Mar. 31	Re: George Raspberry--Defense counsel requests hearing re inspectors Mr. Stewart and Mr. Broderick. Court will decide.		
Apr. 8	Filed order that the motion of the deft. Cainetta Raspberry, to inspect the grand jury minutes and to dismiss the indictment is denied, and that the motion of the defts. Cainetta Raspberry and George Raspberry to dismiss the conspiracy counts of the indictment is denied. CURTIN,		
Apr. 8	Filed certificate of service by mail		
Apr. 11	Filed subpoena - James W. Grable, served 4/10/75		
Apr. 11	Hearing. The following defts. are present. George Raspberry, Cainetta Raspberry, Mary Jean Askew, Rosa McClendon, Louis Toliver and Attys. Jay, McCarthy, Dobson, Jr. and Roger Williams, for the Government. Witnesses for the Govt. Joseph Broderick recalled. Transcript to be filed. Court will set up a briefing schedule.		
Apr. 25	Filed subpoena--Mr. Joseph Broderick, return "no service" 4/23/75		
May 19	Hearing. Adj to 6/17 at 10:00 a.m.		
June 27	Filed Cy. 5 of CJA-21 - Authorization for Transcript re - Elgin C. Cook; Cy. 4 to the Adm. Office.		

1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Nov. 25	Filed Pet. & Ord. for W. of H.C.A.D. Proseq., Mary Jean Askew, for trial; ret. 12/3/1975		
Nov. 24	Pre trial conference held.		
Dec. 3	Filed one subpoena to testify for Jimmie Dickson served on 11-28-75. Filed four subpoenas to testify for Robert Mack, Edward Bartnicki, Richard Mazur, and Irene Witczak served on 12-1-75. Filed one subpoena D/T for Janice Kilborn served on 12-2-75.		
Dec. 4	Filed four subpoenas to testify for Otis Pender, Hyman Fish, Willie Harlan, and James Ware, served on 12-1-75. Filed three subpoenas to testify for William Middleton, Frederick Walentynowicz, and Marcus Klein, served on 12-2-75. Filed one subpoena to testify for Samuel Cioffi, served on 12-3-75.		
Dec. 5	Filed two subpoenas to testify for Richard Jenson, and Telfor Mungo returned no service. Filed three subpoenas to testify for Eugene Skrzypek, Keith Royster, and Lloyd Thomas served on 12-2-75. Filed three subpoenas D/T for Mary Esther Kelly, Gregory A. Saxum, and Bethlehem Steel Company served on 12-2-75.		
Dec. 9	Filed trial memorandum		
Dec. 5	On motion of the Government, deft. Elgin Cook's bail is revoked and the court orders issuance of a bench warrant for the arrest of deft. Issued warrant of arrest for Elgin Cook and bail is revoked		
Dec. 8	Application by Deft. Elgin C. Cook for reinstatement of bail. Application granted. Deft. to be released upon execution of a bail bond identical with the original bond.		
Dec. 8	Filed \$5,000 personal recog. bond for Elgin Cook, upon reinstatement of bail		
Dec. 10	Filed Warrant for arrest of deft. Elgin C. Cook, ret. executed 12/5/75		
Dec. 10	Filed 9 subpoenas - Joseph Ruocco, James A. Hatten, William Julius, served 12/3/75; Henry Lewis, served 12/5/75; Marguerite Johnson, served 12/8/75; Frederick C. Deuschle, Sam Simon, served 12/8/75; Capt. Floyd Edwards - served 12/9/75; Alvin Salter, served 12/8/75 One subpoena (D.T.) - Less-Lee, Inc., served 12/8/75		
Dec. 9	Govt. moves case ready for trial. before Judge Curtin at Buffalo, N.Y. whereupon, jury is empanelled. Trial is hereby adjourned to a time to be fixed by the court. On motion of the deft. and stipulated to by the Govt. deft. Concetta Raspberry is severed from this trial.		
Dec. 16	Filed three subpoenas for Joseph Broderick, Abe Johnson, John Birt, returned no service.		
	(OVER)		

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Dec. 15	Deft. George Raspberry present with counsel, changes his plea from not guilty to guilty to counts 35 and 36 of the indictment. Sentence is deferred until after the completion of the trial of the other defts.		
Dec. 17	Trial continues from 12/9/75 with the same appearances and jury with the exception of Juror No. 2, Darcy R. Souder, who is absent because of a death in his family. He is replaced by alternate No. 1 - Albert Degennars. Trial is adj. until tomorrow--		
Dec. 17	Deft. Rosa Bell McClendon present with counsel, changes her plea from not guilty to guilty to counts 30, 31 and 35 of the indictment. Sentence is deferred until after the completion of the trial of the remaining defts.		
Dec. 19	Filed subpoena - Mamie Calhoun, served 12/17/75		
Dec. 22	Filed two subpoenas D/T Erie County Water Authority, City of Buffalo, served 12-19-75.		
Dec. 22	Filed subpoena and subpoena ticket for Teresa J. Reberham served on 12-16-75		
Dec. 18	Trial continues from yesterday. Adj. until 12-19-75		
Dec. 19	Trial continues from yesterday. Adj. until 12-22-75		
Dec. 22	Trial continues from 12-19-75. Adj. until 12-23-75		
Dec. 23	Trial continues from yesterday. Adj. until 12-29-75		
Dec. 29	Trial continues from 12-23-75 with the same appearances.		
Dec. 31	Filed two subpoenas for Nicholas Kapsuris, and Paul Meindl, returned no s Filed one subpoena for Administrator Deaconess Hospital served 12-30-75.		
Dec. 30	Trial continues from yesterday with the same appearances. Trial is Adj. until 1-5-76		
1976 Jan. 3	Filed CJA 21 copies 2 and 5 for court steno in the amount of \$49.00 original to adm. office for payment. Curtin J.		
Jan. 5	Trial continues from December 30, 1975 with the same appearances & jury--- Deft. Kate Lee Cook moves for dismissal of the indictment. Motion granted. Indictment against this defendant is dismissed. TEXT XXXX XXXXXXXXXXXXXXXXXXXX Deft. Elgin C. Cook moves for dismissal of the indictment. Denied; Deft. Mary Jean Askeu moves for dismissal - den. Deft. Nathaniel Askeu moves for dismissal - denied; Deft. Robert Askeu moves for dismissal - denied; Deft. Louis Toliver moves for dismissal - motion denied; Trial is adj. until tomorrow		
Jan. 6	Trial continues from yesterday with the same appearance & jury - Court rules on requests to charge; Court is adj. until tomorrow - 1/7/76		
Jan. 7	Trial continues from yesterday with the same appearances - Court dismisses counts 21, 24, 28, 47, 49, 54, 56, 62, 66, 69, of the indictment. The jury retires to deliberate upon their verdict;		
Jan. 8	Jury returns to resume their deliberations. Jury returns with the following verdict: Deft. Elgin Cook - GUILTY ON CTS. 1, 2, 4, 6, 7, 8, 9, 12, 13, 14, 15, 18, 19, 20, 23, 36, 37, 41, 51, 53, 64, 65, 68, 71; MARY JEAN ASKEW - GUILTY ON CTS. 1, 2, 3, 10, 13, 14, 22, 25, 58, 59; ROBERT ALDEN ASKEW -		

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Jan. 8	GUILTY ON COUNTS - 1, 2, 5; LOUIS TOLIVER - GUILTY CTS. 13, 14, 29, 36, 37, 46, 50, 51, 52, 53, 57, 58, 59, 63, 64, 65, 67, 68, 70; NATHANIEL ASKEW - NOT GUILTY; DEFT. ELGIN COOK - NOT GUILTY - CT. 52; DEFT. LOUIS TOLIVER - NOT GUILTY CT. 52; Sentence - Feb. 23, 1976.		
Jan. 8	Filed Jury Verdict		
Jan 13	J.S. 3 made for deft. Kate Lee Cook, and Nathaniel Askew.		
Jan 19	Filed Judgment of acquittal for deft. Nathaniel Askew.		
Jan 19	Filed order dismissing indictment against Kate Lee Cook. Curtin, J.		
Feb 5	Filed Order dismissing the Indictment against Cainetta Raspberry-- CURTIN, J.		
Feb 20	Filed Pet. & Order for Writ of H.C. Ad Proseq.--Curtin, J. : Sentence of Mary Jean Askew		
Feb. 23	On motion of the Govt. Elgin Cook is sentenced as follows: Deft. remanded to the custody of the Attorney General for a period of 4 years on counts 1, 2, 4, 6, 9, 12, 15, 18, 20, 23, 36, 37, 41, 51, 53, 64, 65, 68, 71 of the indictment. Sentences are to run concurrently. CURTIN, J.		
Feb. 23	For sentence: Deft. Robert Askew sentenced under Title 18 Sec. 4209. Imposition of sentence suspended and deft placed on probation for 2 years on counts 1, 2, and 5 of the indictment, to run concurrently. CURTIN, J.		
Feb. 29	Deft. Toliver is sentenced as follows: Deft. is remanded to the custody of the Atty. General for a period of Five (5) Years on Counts 13, 14, 29, 36, 37, 46, 50, 51, 55, 57, 58, 59, 63, 64, 65, 68, 70: The sentence on Counts 58, 59, 63, 64, 65, 68, 70 shall be concurrent on those particular counts, but consecutive to the sentence on Counts 13, 14, 29, 36, 37, 46, 50, 51, 55, 57. In other-words you will be sentence for a period of Five (5) Years. It will be a consecutive term as far as the remainder of Counts that I have indicated is concerned. As to the Consecutive Period, Execution of the Sentence is suspended, and the defendant is placed on probation for a period of Four (4) Years--CURTIN, J.		
Feb 23	Filed Deft Elgin Cook's notice of appeal		
" 24	Filed Deft. Elgin Cook's motion for bail pending appeal		
" 26	The Court on motion of the Government, sentences the deft. Elgin Cook on the counts inadvertently omitted in the 2/23/76 sentence, as follows: Deft. Elgin Cook is remanded to the custody of the Atty. General for a period of Four (4) Years on Cts. 7, 8, 13, 14 and 19 of the indictment. This sentence is to run concurrently with the other counts on which deft. has already been sentenced-- Curtin, J.		
Feb. 26	Filed Judgment and Probation for Deft. Robert Allen Askew		
Feb. 27	Application for bail for Deft. Elgin C Cook. Court rules that deft.		

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Feb 27	may proceed as an indigent person on appeal. Court sets bail at \$5,000, cash or bond.		
Mar 1	Filed Judgment and Commitment Order for Deft. Elgin Cook. Commitment issued to the Marshal.		
Mar 1	Filed Suppl. Judgment & Commitment Order for Deft. Elgin Cook, including Cts. 7, 8, 13, 14 and 19, inadvertently omitted from the 2/23/76 sentence. Commitment issued to the Marshal.		
Mar 1	Filed \$5,000 appeal bond for Deft. Elgin Cook - Stuyvesant Insurance Company, surety.		
Mar 1	Application by deft/ for bail. Deft. released on bail.		
Mar 1	Deft. Mary Jean Askew is sentenced as follows: Deft. is remanded to the custody of the Atty. General for a period of Three (3) Years on Cts. 1, 2, 3, 10, 13, 14, 22, 25, 58, and 59 of the indictment. This sentence is on each count of the indictment and are to run concurrently. Sentence to run concurrently with sentence now being served. -- CURTIN, J.		
Mar 1	Deft. Louis Toliver is sentenced on Count 67 of the indictment as follows. The sentence is the same as the other counts of the indictment. Deft. remanded to the custody of the Atty. General for a period of five (5) Years. to run concurrently with the other counts. -- CURTIN, J.		
Mar 1	Filed \$10,000 appeal bond for deft. Louis Toliver (Archie Toliver, and Ernestine Toliver, sureties)		
Mar 1	Filed Deft. Mary Jean Askew's notice of appeal		
Mar 2	Filed Deft. Toliver's notice of appeal		
Mar 4	Filed Judgment and Order of Commitment - for Louis Toliver. Commitment issued		
Mar 4	Filed Judgment and Order of Commitment (Supplemental - Ct. 67) for Deft. Toliver. Commitment issued		
Mar 4	Filed Judgment and Order of Commitment for Deft. Mary Jean Askew. Commitment issued.		
Mar 5	Cy of notice of appeal for deft. Elgin Cook, with form A, and financial affidavit, mailed to U.S. Atty., Deft., and CCA with statement of docket entries		
Mar 5	Cy of notice of appeal for deft. Louis Toliver, with form A and financial affidavit mailed to U.S. Atty., Deft., and the CCA with statement of docket entries		
Mar 5	Cy of notice of appeal for deft. Mary Jean Askew, with form A and financial affidavit, mailed to the U.S. Atty., Deft. and the CCA with statement of docket entries		
Mar 5	Filed Writ of H.C. Ad Proseq, Mary Jean Askew, executed - 2/28/76		
Mar 9	Filed Cy 5 of CJA-21 - Authorization for transcript - Elgin Cook; cy to the Adm. office		
Mar 9	Filed Cy 5 of CJA-21 - authorization for transcript - Mary Jean Askew; cy to the Adm. office		
Mar 11	Deft. Toliver appears in court and makes application to leave Erie County to travel to San Antonio, Texas. Permission granted to attend funeral of his cousin's wife.		

1 THE COURT:

All the defendants and counsel are
here in the Cook case. We have provided
a third table here, but if it is not going
to be used, it would seem to me it might
be useful to move it out so that you will
have more room. Are there any extra
chairs there not used, Mr. Lamantia?

8 MR. LAMANTIA:

Nobody is using any at that time.

9 THE COURT:

Could you move those chairs back up
here out of the way, please. We will do
it later on. At the break, Mr. White,
let us move that table back. I thought we
had a request for a third table. Everyone
is here.

15 MR. JAY:

Your Honor, prior to the Court
summoning the jury, I have a motion to make
at this time.

18 THE COURT:

All right. Before that, I want to
be sure, - Mr. Walsh, are all defendants
here?

21 MR. WALSH:

Your Honor, I think all six defendants
and all six attorneys are here.

23 THE COURT:

There is a motion?

24 MR. JAY:

Yes, your Honor. As the Court knows,
we started selection of this jury with nine

1 defendants and nine attorneys. Now there
2 are seven, two defendants having pled
3 guilty and I assume one which I saw this
4 morning, - there are six left. We have
5 just lost another one.

6 THE COURT:

Mrs. Raspberry was seven.

7 MR. JAY:

Of course, right.

8 THE COURT:

George Raspberry pled guilty yester-
9 day.

10 MR. WILLIAMS:

I believe Monday, your Honor.

11 THE COURT:

Monday. Rosa Bell McClendon, as
12 you all know, pled guilty this morning.

13 MR. JAY:

In any event, at this time, your
14 Honor, I am going to move that this jury
15 panel be excused on the grounds that the
16 attorneys and the defendants who prior
17 in this case took part in the selection
18 of the jury - -

19 THE COURT:

All right. State the motion quickly,
20 please.

21 MR. JAY:

Yes, sir. Their knowledge and work
22 went into the selection of this jury and
23 I feel that if it is possible or if the
24 possibility of a plea was in their mind at
25 that time, their taking part in the

1 selection of the jury is prejudicial to
2 these other defendants, especially mine.

3 THE COURT: That motion is denied.

4 MR. ABRAMOWITZ: Your Honor, I would just request that
5 in one way or other, the Court specifically
6 instruct the jury the fact that there were
7 nine here and now there is six has no
8 bearing.

9 THE COURT: I will tell them that certainly the
10 other defendants pled guilty and that fact
11 has nothing to do with the remaining de-
12 fendants here, that everyone here is pre-
13 sumed innocent.

14 MR. ABRAMOWITZ: I would ask your Honor not explain why
15 they are not here and not indicate they
16 pled guilty. It is not their concern at
17 all.

18 THE COURT: Is that the way you want me to leave
19 it?

20 MR. JAY: Yes, your Honor. I would also request
21 that the Court, in some way, in your in-
22 structions to them, when they leave today,
23 instruct them specifically not to read any
24 newspaper accounts of this.

25 THE COURT: I will do that. Of course, during the

1 course of the trial, during the testimony
2 of the witnesses, we may have Mr. Raspberry.
3 I expect we will have Mr. Raspberry as a
4 witness and at that time, it will be clear
5 that he pled guilty. Have the jury come up,
6 please.

7 MR. WILLIAMS:

Your Honor, one thing, if I may.
8 Anticipating a motion for exclusion of
9 witnesses, and I certainly agree to that
10 with one exception. I have in the court-
11 room with me Mr. Leroy Traub who is a
12 postal investigator who is the case agent.
13 Because of the voluminous nature of the
14 exhibits and for other reasons, I feel as
15 though I need him in the courtroom. He
16 will testify, but his testimony certainly
17 doesn't relate to his knowledge of the
18 commission of a crime. He will simply
19 testify with respect to the taking of
20 handwriting exemplars of the various
21 defendants and I don't think his presence
22 in the courtroom will, in any way, influ-
23 ence his testimony.

24 THE COURT:

He may stay.

25 MR. WILLIAMS:

Thank you.

1 same as what he thought they would, of
2 course, you should accept the testimony
3 of the witnesses.

4 The attorneys for defendants may
5 make an opening statement if they desire,
6 but they are not required to because
7 this goes along with the idea that
8 each and every defendant in this case
9 is presumed innocent until proven guilty
10 beyond a reasonable doubt so that it is
11 up to the Government to prove the case
12 and the defendants are not obliged to
13 make any statement at all but they can
14 if they desire.

15 There are three defendants, - I
16 think one we have already explained, in
17 the case of defendant Caineretta Raspberry,
18 her case was severed. There are two
19 other defendants who will not be with us
20 now, George Raspberry and Rosa Bell
21 McClendon. Those cases, the problems
22 involved in those cases are not in issue
23 before you. We have the other defendants
24 in the case and you are to zero in on
25 the facts and the law as to the other

1 defendants so that the fact that Rosa
2 Bell MacLendon and George Raspberry are
3 not here is not to enter into your
4 thoughts or suggestions one way or another
5 except that during the course of the
6 testimony necessarily there will be some
7 kind of, I suppose, from time to time
8 testimony of relationships or connections
9 or conversations with these individuals
10 and if you hear that you may consider
11 it as to the defendants who remain in
12 the courtroom in this case.

13 Mr. Williams, you may begin your
14 opening statement.

15 MR. WILLIAMS:

16 Thank you, your Honor. Ladies and
17 gentlemen, defense counsel;

18 What I am about to state to you or
19 say to you is what is known as an
20 opening statement which the Government
21 is obligated to hear. The purpose of
22 which is to set forth to you in some
23 fashion what the charges are against
24 these defendants that are present and
25 what the Government intends to prove as
it relates to these defendants.

1 say?

2 MR. MCCARTHY: Only, your Honor, your Honor's listing
3 of the various names of potential witnesses
4 at the beginning. There were several not
5 on the list provided earlier and I ask
6 the United States Attorney provide those
7 names not previously provided.

8 MR. WILLIAMS: What I did was give my secretary all
9 the subpoenas.

10 THE COURT: You will check that.

11 MR. LAMANTIA: For the record, I will advise Mr.
12 Williams one of the prospective witnesses
13 is my cousin.

14 MR. WILLIAMS: That is only on handwriting?

15 THE COURT: We are not going to disqualify you,
16 Mr. Lamantia. Mr. Williams, before you
17 had some proposals on pleas. I think it
18 might be a good idea to put that on the
19 record, what it is, and will you all dis-
20 cuss this with your clients. Whatever the
21 proposal is will you tell us?

22 MR. WILLIAMS: I oftentimes have difficulty keeping
23 the defendants straight. With respect to
24 the defendants, let me, first of all, say
25 this; I make this offer contingent upon

1 putting the whole thing together as a
2 package. With respect to the defendants
3 Toliver and Cook, any three counts of the
4 indictment.

5 MR. ADAMOWITZ: That is clearly Elgin Cook.

6 MR. WILLIAMS: Elgin, yes. With respect to the
7 defendants George Raspberry and Mary Jean
8 Askew, two counts, to any two of the
9 felony counts. With respect to the
10 defendants Kate Lee Cook, Nathaniel Askew
11 and Robert Askew, two misdemeanors, being
12 violation of one of the postal sections,
13 Section 1700, although I don't have it
14 off the top of my head at the present time.

15 THE COURT: Anybody else? You left somebody out,
16 didn't you, - Nathaniel - -

17 MR. WILLIAMS: No, I mentioned Nathaniel. With
18 respect to the defendant McClendon - -

19 THE COURT: Rosa Bell.

20 MR. D'AGOSTINO: I was waiting for a dismissal, Judge.
21 It kept going down and down.

22 MR. WILLIAMS: With respect to the defendant
23 McClendon, I would have to say, at this
24 point, three counts.

25 THE COURT: All right. You are going to make all

In the District Court of the United States

For the Western District of New York

**SUPERSEDING
INDICTMENT**

THE UNITED STATES OF AMERICA

MARCH 1974 SESSION

No. 1974-244

vs.
ELGIN C. COOK, KATE LEE COOK,
MARY JEAN ASKEW, ROSA BELL MCCLENDON,
GEORGE C. RASPBERRY, CAINETTA RASPBERRY,
NATHANIEL ASKEW, ROBERT ALLEN ASKEW and
LOUIS TOLIVER

Via Title 18,
United States Code,
Sections 371, 1341, 1342
and 2

DICKSON'S SUMAS
68
71

Charles Sumner
54
15

CIA	CAC	36	36	36
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COUNT I
CONSP.

The Grand Jury Charges:

That beginning in or about December, 1969 and continuing through the 15th day of December, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL MCCLENDON, ROBERT ALLEN ASKEW and NATHANIEL ASKEW, did, willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the grand jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by placing in an authorized depository for mail matter, certain claim for benefits forms, verification of employment forms and certification forms to be sent or delivered by the Post Office Department of the United States and/or the United States Postal Service, and by causing to be delivered by mail according to direction thereon, New York State Unemployment Insurance Benefits checks and certification forms and in furthering such scheme or device by means of the Post Office Department of the United States and/or the

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United States Postal Service, using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about January 26, 1971, the defendant, MARY JEAN ASKEW, using the false and fictitious name of Katheryn Lee Willis made claim upon the New York State Department of Labor, Division of Employment, for unemployment insurance benefits, indicating employment with the Cook and Green Car Wash between January 26, 1970 and January 24, 1971. *Eaglen*

(2) That on or about January 30, 1970, the defendant, ELGIN C. COOK, mailed Form 1012.11 to the New York State Department of Labor verifying that a Katheryn Lee Willis was employed by him. *not proved*

(3) That between February 14, 1971 and April 30, 1972, the defendant, MARY JEAN ASKEW, mailed to the New York State Unemployment Insurance Fund, using the name Katheryn L. Willis, a certification that she was still unemployed and entitled to insurance benefits. *the record reflects that*

(4) That based upon those certifications, the State of New York mailed to the defendant, MARY JEAN ASKEW, using the assumed name of K. L. Willis, unemployment insurance fund checks which checks were endorsed by and cashed by the defendant, MARY JEAN ASKEW.

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(5) That on or about March 3, 1971, the defendant ELGIN C. COOK, verified, in a Request for Employment and Wage Data, mailed to the New York State Unemployment Insurance Fund, that the defendant, ROBERT ALLEN ASKEW, was employed by him. *not found*

(6) That between February 14, 1972 and May 1, 1972, the defendant, ROBERT ALLEN ASKEW, mailed to the New York State Unemployment Insurance Fund a statement certifying that he was still unemployed.

(7) That between February 24, 1972 and May 5, 1972, the defendant, ROBERT ALLEN ASKEW, received via the mails, various checks from the State of New York, Albany, New York.

VI (8) That on or about March 2, 1971, the defendant, ELGIN C. COOK, mailed to the New York State Department of Labor, Form L012.11 verifying that one Mary Betts was employed by him from February 23, 1970 to February 21, 1971. *not found*

(9) That between March 18, 1971 and May 19, 1971, checks were issued by the State of New York to Mary Betts at 83 Brunswick Blvd., Buffalo, New York.

(10) That on or about February 4, 1971, the defendant, ELGIN C. COOK, filed a claim with the New York State Department of Labor for unemployment insurance benefits under the fictitious name of Raymond Briggs.

(11) That in or about February, 1971, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that Raymond Briggs was

KJ (12) That on or about February 11, 1971, the defendant MARY JEAN ASKEW, filed a claim with the New York Department of Labor, Form L0330, under the fictitious name of Lucy M. Coleman.

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wherein she alleged that she was employed by the Cook and Green Car Wash from February 9, 1970 to February 7, 1971.

(13) That on or about February 14, 1971, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that one Lucy M. Coleman worked for him.

(14) That on or about February 14, 1971, the defendant, MARY JEAN ASKEW, filed a claim for New York State Unemployment Insurance benefits with the New York State Department of Labor using the false and fictitious name of Willie S. Middleton.

(15) That on or about February 20, 1970, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that one Willie S. Middleton was employed by him.

(16) That between April 13, 1971 and April 25, 1972, the defendant, MARY JEAN ASKEW, mailed Form LO-06.1 to the New York State Department of Labor verifying that she was unemployed.

(17) That between April 16, 1971 and May 1, 1972, the defendant, MARY JEAN ASKEW, received via the mails from the New York State Unemployment Insurance Fund, Albany, New York, unemployment insurance checks in the name of Willie S. Middleton, which checks were endorsed and cashed by her.

(18) That on or about February 9, 1971, a claim for unemployment insurance benefits was received by the [redacted] claimed to be eligible for unemployment insurance benefits as a result of having worked for the Cook and Green Car Wash.

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(19) That subsequent thereto and on and between October 22, 1971 and April 29, 1972, checks issued by the State of New York Unemployment Insurance Fund, Albany, New York, were mailed to Keith Royster, 271 Southampton Street, Buffalo, New York, which checks were endorsed and cashed by the defendant, ROSA BELL McLENDON.

(20) That on or about November 2, 1971, the defendant, ELGIN C. COOK, mailed Form DC12.11 to the New York State Department of Labor verifying that the defendant, NATHANIEL ASKEW, worked for him between August 17, 1970 and August 15, 1971.

(21) That between October 20, 1971 and May 31, 1972, checks drawn on the New York State Unemployment Insurance Fund were mailed to the defendant NATHANIEL ASKEW, at 83 Brunswick Blvd., Buffalo, New York.

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COUNT II

The Grand Jury Further Charges:

MAIL
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That beginning in or about December, 1969 and continuing to December 15, 1972, in the Western District of New York, the defendants, ELGIN C. COOK; MARY JEAN ASKEW, ROSA BELL McCLENDON, ROBERT ALLEN ASKEW, and NATHANIEL ASKEW, ^{Nh} devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for the Cook and Green Car Wash, thereby, obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, ROBERT ALLEN ASKEW, and NATHANIEL ASKEW, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, ROBERT ALLEN ASKEW, and NATHANIEL ASKEW, would claim to have worked for the Cook and Green Car Wash.

(b) It was a further part of the scheme and artifice that the defendant, ELGIN C. COOK, would verify, by mailing to the New York State Department of Labor, Form LO 12.11, verifying that the said defendants using various false and fictitious names worked for him.

(c) It was a further part of the scheme and artifice for the defendant, ELGIN C. COOK, to place and cause to be placed in an authorized depository for mail matter, such unemployment verification form.

(d) It was a further part of the scheme and device for the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA

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BELL McCLENDON, ROBERT ALLEN ASKEW and NATHANIEL ASKEW, to place and cause to be placed in an authorized depository for mail matter, Form LO406 directed to the New York State Department of Labor verifying entitlement to New York State Unemployment Insurance benefits.

(e) It was a further part of the scheme and artifice that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund mailed to them under real

~~or fictitious names, with the intention of obtaining from the~~

That for the purpose of executing the aforesaid scheme and artifice, and on or about January 30, 1970, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that a Katheryn Lee Willis was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT III

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and between February 14, 1971 and April 30, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed to the New York State Unemployment Insurance Fund, using the name Katheryn L. Willis, a certification that she was still unemployed and entitled to insurance benefits and that based upon those certifications, the State of New York mailed to the defendant, MARY JEAN ASKEW, using the assumed name of K. L. Willis, unemployment insurance benefits; all in violation of Title 18, United States Code, Sections 1341 and 2.

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COUNT IV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about March 3, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, verified, in a Request for Employment and Wage Data, mailed to the New York State Unemployment Insurance Fund, that the defendant, ROBERT ALLEN ASKEM, was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT V

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and between February 14, 1972 and May 1, 1972, in the Western District of New York, the defendant, ROBERT ALLEN ASKEM, mailed to the New York State Unemployment Insurance Fund a statement certifying that he was still unemployed and that between February 24, 1972 and May 5, 1972, the defendant, ROBERT ALLEN ASKEM, received via the mails, various checks from the State of New York, Albany, New York; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT VI

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about

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defendant, ELGIN C. COOK, mailed to the New York State Department of Labor, Form L012.11 verifying that one Mary Betts was employed by him from February 23, 1970 to February 21, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT VII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and in or about February, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that Raymond Briggs was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT VIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about February 14, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that one Lucy M. Coleman worked for him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT IX

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about

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February 20, 1970, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that one Willie S. Middleton was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT X

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and between April 15, 1971 and April 25, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed Form LO406.1 to the New York State Department of Labor verifying that she was unemployed and between April 16, 1971 and May 1, 1972, the defendant, MARY JEAN ASKEW, received via the mails from the New York State Unemployment Insurance Fund, Albany, New York, unemployment insurance checks in the name of Willie S. Middleton, which checks were endorsed and cashed by her; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XI

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about February 9, 1971, in the Western District of New York, a claim for unemployment insurance benefits was received by the New York State Department of Labor wherein one Keith Royster claimed to be eligible for unemployment insurance benefits and that subsequent thereto and on and

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between October 22, 1971 and April 29, 1972, checks issued by the State of New York Unemployment Insurance Fund, Albany, New York, were mailed to Keith Royster 271 Southampton Street, Buffalo, New York, which checks were endorsed and cashed by the defendant, ROSA BELL MCLENDON; all in violation of Title 18, United States Code, Sections 1341 and 1342.

COUNT XII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about November 2, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that the defendant, MATHANIEL ASKEW, worked for him between August 17, 1970 and August 15, 1971 and that between October 20, 1971 and May 31, 1972, checks drawn on the New York State Unemployment Insurance Fund were mailed to the defendant, MATHANIEL ASKEW, at 83 Brunswick Blvd., Buffalo, New York; all in violation of Title 18, United States Code, Sections 1341 and 2.

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COUNT XIII

The Grand Jury Further Charges:

That beginning in or about October, 1971 and continuing through the 1st day of August, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASHBY, ROSA BELL McCLENDON, LOUIS TOLIVER and KAINETTA RASPBERRY, did, willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the grand jury unknown, to commit offenses against the United States: to wit, to violate Sections 13-1 and 13-2 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by placing in an authorized depository for mail matter, certain claim for benefits forms, verification of employment forms and certification forms to be sent or delivered by the Post Office Department of the United States and/or the United States Postal Service, and by causing to be delivered by mail according to direction thereon, New York State Unemployment Insurance benefits checks and certification form and in furthering such scheme or device by means of the Post Office Department of the United States and/or the United States Postal Service, using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following

(1) That on or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed

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to the New York State Unemployment Department Form LO 12.11 verifying that one Jean Carter was employed by him as the owner of Cook's Auto Care from November 2, 1970 until October 31, 1971.

(2) That on or about December 2, 1971, the defendant, ELGIN C. COOK, using the fictitious name of Lynn F. Carter mailed with the New York State Department of Labor a claim for unemployment insurance benefits, claiming to have worked for Cook's Auto Care from November 30, 1970 to November 28, 1971.

(3) That on or about January 20, 1972, the defendant, ROSA BELL McCLENDON, filed a claim with the New York State Department of Labor using the false and fictitious name of Johnnie L. Jones, claiming to have worked for Cook's Auto Care from January 16, 1971 to January 16, 1972.

(4) That on or about January 26, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Johnnie L. Jones was employed by him from January 16, 1971 to January 16, 1972.

(5) That on or between February 8, 1972 and May 23 1972, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1 certifying, in the name of Johnnie L. Jones, that she was unemployed and entitled to unemployment insurance benefits.

(6) That on or between February 14, 1972 and May 23, 1972, the mails numerous checks from the State of New York, in

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the name of J. L. Jones, directed to her at 387 Woodlawn Avenue, Buffalo, New York, which she endorsed and cashed.

(7) That on or about December 20, 1971, the defendant, LOUIS TOLIVER, filed a claim with the New York State Department of Labor wherein he claimed to have worked for Cook's Auto Care from April 17, 1971 to December 17, 1971 using the false and fictitious name of Terry Cole.

(8) That on or about December 29, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 12.11 verifying that one Terry Cole was employed by him from December 11, 1970 to December 19, 1971.

(9) That on or between March 15, 1972 and May 15, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Department of Labor Form LO 10-06.1, certifying under the false and fictitious name of Terry Cole, that he was and continued to be unemployed.

(10) That on or between April 4, 1972 and May 23, 1972, the defendant, LOUIS TOLIVER, received via the mails from the New York State Unemployment Insurance Fund, various checks directed to T. Cole, 307 Johnson Street, Buffalo, New York, which he endorsed and cashed.

(11) That on or about January 26, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Patricia Ann Green was employed by him from January 18, 1971 to January 16, 1972.

MARY JEAN ASKEW, filed a claim with the New York State Department of Labor wherein she claimed to have worked for

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Cook's Auto Care from November 16, 1970 to November 14, 1971 using the false and fictitious name of Terry Mitchell.

(13) That on or about December 6, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Terry Mitchell was employed by him from November 16, 1970 to November 14, 1971.

(14) Between January 13, 1972 and April 27, 1972, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1, certifying under the false and fictitious name of Terry Mitchell, that she was and continued to be unemployed.

(15) On and between December 16, 1971 and May 3, 1972, the defendant, MARY JEAN ASKEW, received via the mail from the State of New York, New York State Insurance Fund, various checks directed to T. Mitchell, 83 Brunswick Boulevard, Buffalo, New York, which she cashed and cashed.

(16) On or about October 29, 1971, the defendant, MARY JEAN ASKEW, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of Jerry Smith, claiming to have worked for Cook's Auto Care from October 26, 1970 to October 24, 1971.

(17) On or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Terry Mitchell was employed by him from November 16, 1970 to October 24, 1971.

(18) On and between January 12, 1972 and June 26, 1972, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1

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wherein she verified under the false and fictitious name of Jerry L. Smith that she was and continued to be unemployed.

(19) On and between January 17, 1972 and July 5, 1972, the defendant, MARY JERRY SMITH, received via the mail, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to J. L. Smith, 83 Brunswick Boulevard, Buffalo, New York which she endorsed and cashed.

(20) On or about November 4, 1971, the defendant, ELGIN C. COOK, using the false and fictitious name of Mary J. Smith, made a claim for benefits for unemployment insurance benefits upon the State of New York, Department of Labor, claiming to have worked for Cook's Auto Care from November 2, 1970 to October 31, 1971.

(21) On or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LD 12.11 verifying that one Mary J. Smith was employed by him from November 2, 1970 to October 31, 1971.

(22) On or about October 28, 1971, the defendant, ELGIN C. COOK, filed with the State of New York, a claim for unemployment insurance benefits using the false and fictitious name of Cainetta Rasperry, claiming to have worked for Cook's Auto Care from October 26, 1970 to October 24, 1971.

(23) On or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LD 12.11 verifying that Cainetta Rasperry was employed by him from October 26, 1970 to October 24, 1971.

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(24) On and between November 2, 1970 and October 26, 1971, the defendant, KAINETTA RASPBERRY, certified, by mailing to the New York State Department of Labor Form LO 406 verifying that she remained unemployed and entitled to unemployment insurance benefits.

(25) On and between November 2, 1970 and October 26, 1971, the defendant, KAINETTA RASPBERRY, received via the mails from the New York State Unemployment Insurance Fund numerous checks in her own name and in the name of Mary J. Smith which she endorsed and cashed.

COUNT XIV

The Grand Jury further charges:

That beginning in or about October, 1971 and continuing through the 1st day of August, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCIENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund by filing false and fraudulent claims for such benefits using false and fictitious names and bona fide names, claiming to have worked for Cook Auto Care, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud so devised and intended to be devised by the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCIENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, was in substance as follows:

(a) It was a part of a scheme and artifice that the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCIENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, did claim to have worked for Cook Auto Care.

(b) It was a further part of the scheme and artifice that the defendant, ELGIN C. COOK, did verify, by mailing to the New York State Department of Labor, Form LO 12.11, verifying that said defendants, using various false and fictitious names, worked for Cook Auto Care.

(c) It was a further part of the scheme and device for the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCIENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, to place and cause to be placed in an authorized depository

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for mail matter Form LO 406.1, directed to the New York State Department of Labor verifying their continued unemployment and entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and artifice that the defendants, ELGIN C. COOK, MARY JEAN ASKEW and ROSA BELL McCLENDON, did cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund mailed to them under real or fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and on or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Unemployment Insurance Department, Form LO 12.11, verifying that one Jean Carter was employed by him as the owner of Cook's Auto Care from November 2, 1970 until October 31, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XV

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on or about January 26, 1972, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11, verifying that one Johnnie L. Jones was employed by him from January 16, 1971 to January 16, 1972; all in violation of Title 18, United States Code, Sections 1341 and 2.

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COUNT XVI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or between February 8, 1972 and May 23, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1 certifying, in the name of Johnnie L. Jones, that she was unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on or between February 14, 1972 and May 29, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, received via the mails numerous checks from the State of New York, in the name of J. L. Jones, directed to her at 387 Woodlawn Avenue, Buffalo, New York, which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about December 29, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the State of New York, Department of

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Labor, Form LO 12.11 verifying that one Terry Cole was employed by him from December 1, 1970 to December 19, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XIX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about January 26, 1972, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Patricia Ann Green was employed by him from January 13, 1971 to January 16, 1972; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about December 6, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Terry Mitchell was employed by him from November 16, 1970 to November 14, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that between January 13, 1972 and April 27, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1, certifying under the false and fictitious name of Terry Mitchell, that she was and continued to be unemployed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between December 16, 1971 and May 3, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, received via the mail from the State of New York, Unemployment Insurance Fund, various checks directed to T. Mitchell, 83 Brunswick Boulevard, Buffalo, New York, which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about November 10, 1971 in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Jerry L. Smith was employed by him from October 26, 1970 to October 24, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2..

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COUNT XXIV

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on and between January 12, 1972 and June 28, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1 wherein she verified under the false and fictitious name of Jerry L. Smith that she was and continued to be unemployed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXV

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between January 17, 1972 and July 5, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, received via the mail, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to J. L. Smith, 83 Brunswick Boulevard, Buffalo, New York which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXVI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between November 2, 1970 and October 26, 1971, in the Western District of New York, the defendant, CAINETTA RASPBERRY, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1, wherein she verified

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that she was and continued to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXVII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between November 2, 1970 and October 26, 1971, in the Western District of New York, the defendant, CAINETTA RASPBERRY, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to her in her own name and in the name of Mary J. Smith which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXVIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between March 15, 1972 and May 15, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1 wherein he verified under the false and fictitious name of Terry Cole that he was and continued to be unemployed and entitled to unemployment insurance funds; all in violation of Title 18, United States Code, Sections 1341 and 2.

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COUNT XXIX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between April 4, 1972 and May 23, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to T. Cole, 307 Johnson Street, Buffalo, New York, which he endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXX

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing through December 1, 1972, in the Western District of New York, the defendants GEORGE C. RASPBERRY and ROSA BELL McCLENDON, did, willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the Grand Jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Pat's Pad and Lounge by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about October 12, 1972, the defendant, ROSA BELL McCLENDON, filed a claim with the New York State Department of Labor using the false and fictitious name of Regina Ann Lee, claiming to have worked for Pat's Pad and Lounge from [redacted] to [redacted].

(2) That on and between October 25, 1972 and November 22, 1972 the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor

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Form L0406.1 verifying that she continues to remain unemployed.

(3) That on and between November 1, 1972 and November 26, 1972, the defendant, ROSA BELL McCLENDON, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment insurance benefits checks addressed to R. Lee at 617 Wilson Street, Lackawanna, New York, which she endorsed and cashed.

(4) That on or about September 3, 1972, the defendant GEORGE C. RASPBERRY, made claim upon the New York State Department of Labor for unemployment insurance benefits using the false and fictitious name of Betty Louise Collins, claiming to have worked for Pat's Pad and Lounge from September 6, 1971 to September 3, 1972.

(5) That on or about November 13, 1972 and November 17, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks in the name of T. Scott, which he endorsed and cashed.

COUNT XXXI

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing to December 1, 1972, in the Western District of New York, the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for Pat's Pad and Lounge, thereby

obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, would claim to have worked for Pat's Pad and Lounge.

(b) It was further part of the scheme and device for the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON to place and cause to be placed in an authorized depository for mail matter, Form L0406 directed to the New York State Department of Labor verifying entitlement, in their own names or fictitious names, to New York State Unemployment Insurance benefits.

(c) It was further part of the scheme and artifice that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund mailed to them under real or fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, that on and between October 25, 1972 and November 22, 1972, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor Form L0406 verifying that she continued to remain unemployed and entitled to unemployment insurance benefits.

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COUNT XXXII

The Grand Jury further charges:

That on furtherance of the scheme, artifice, and device set forth in Count XXXI above, and on and between November 1, 1972 and November 29, 1972, in the Western District of New York, the defendant, ROSA BELL McLENDON, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment insurance benefits checks addressed to R. Lee at 617 Wilson Street, Lackawanna, New York, which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXXIII

The Grand Jury further charges:

That on furtherance of the scheme, artifice and device set forth in Count XXXI above, and on and between November 13 1971 and November 17, 1972, in the Western District of New York, the defendant, George C. Raspberry, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks in the name of T. Scott, which he endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXXIV

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing through December 1, 1972, in the Western District of New York, the defendants, GEORGE C. RASPBERRY and ROSA BELL McLENDON, did

willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the Grand Jury unknown, to commit offenses against the United States; to wit. to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Harland's Delicatessen by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about October 25, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Freddie Rogers, claiming to have worked for Harland's Delicatessen, from October 25, 1971 to October 22, 1972.

(2) That between November 16, 1972 and December 13, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks directed to F. Rogers, 173 Northampton Street.

(3) That on or about August 30, 1972, the defendant, ROSA BELL McLENDON, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the

false and fictitious name of Terry Lee Taylor, claiming to have worked for Harland's Delicatessen from August 30, 1971 to August 27, 1972.

~~CONFIDENTIAL~~
The Grand Jury further charges:

That beginning in or about August, 1972 and continuing through December 1, 1972, in the Western District of New York, the defendants, GEORGE C. RASPBERRY and ROSA BELL McLENDON, devised and intended to devise a scheme and artifice to defraud The New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for Harland's Delicatessen, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, GEORGE C. RASPBERRY and ROSA BELL McLENDON, was in substance as follows:

(a) It was part of the scheme and artifice that the defendants, GEORGE C. RASPBERRY and ROSA BELL McLENDON, would claim to have worked for Harland's Delicatessen.

(b) It was a further part of the scheme and device for the defendants, GEORGE C. RASPBERRY and ROSA BELL McLENDON, to place and cause to be placed in an authorized depository for mail matter, Form L012.11, falsely verifying that they, under fictitious names, worked for Harland's Delicatessen.

(c) It was a further part of the scheme and device for the defendants, GEORGE C. RASPBERRY and ROSA BELL McLENDON, to place and cause to be placed in an authorized depository for

mail matter Form L0406 directed to the New York State Department of Labor, verifying their continued entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and device that the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and mailed to them in their false or fictitious names.

That for the purpose of executing aforesaid scheme and artifice, and on or about October 25, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Freddie Rogers, claiming to have worked for Harland's Delicatessen, from October 25, 1971 to October 22, 1972; and between November 16, 1972 and December 13, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks directed to F. Rogers, 173 Northampton Street, Buffalo, New York, which he endorsed and cashed; and on or about August 30, 1972, the defendant, ROSA BELL McCLENDON, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Terry Lee Taylor, claiming to have worked for Harland's Delicatessen from August 30, 1971 to August 27, 1972; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXXVI

The Grand Jury further charges:

That beginning in or about March, 1971 and continuing through June 1, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY, ROSA BELL McCLendon, and LOUIS TOLIVER, did wilfully, knowingly and unlawfully combine, conspire and agree together to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain monies from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Steel City Collision by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about March 17, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of Bill Brown, claiming to have

1972.

(2) That on or about March 22, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one Bill Brown was employed by Steel City Collision between March 15, 1971 and March 12, 1972.

(3) That between March 28, 1972 and April 26, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed Form L0406.1 to the New York State Unemployment Insurance Fund wherein he verified using the false and fictitious name of Bill Brown that he remained unemployed and entitled to Unemployment Insurance Fund benefits.

(4) That on and between April 7, 1972 and April 30, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks directed to B. Brown, 179 Northampton Street, Buffalo, New York which he endorsed and cashed.

(5) That on or about March 21, 1972 the defendant, ELCIN C. COOK, made claim upon the New York State Department of Labor for unemployment insurance benefits under the false and fictitious name of Sylvester Crooks, claiming to have worked for Steel City Collision from March 29, 1971 to March 26, 1972.

(6) That on or about April 1, 1971, the defendant, ELCIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11 verifying under the false and fictitious name of Eugene Skrozyk that one Sylvester Crooks worked for Steel City Collision from March 23, 1970 to

(7) That on or about April 1, 1971, the defendant, ROSA BELL McLENDON, mailed or caused to be mailed to the New

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York State Department of Labor Form L012.11 verifying under the false and fictitious name of Eugene Skrozyk that one Freddie Jackson worked for Steel City Collision from March 23, 1970 to March 21, 1971.

(8) That on and between April 19, 1971 and May 24, 1971, the defendant, ROSA BELL McLendon, mailed or caused to be mailed to the State of New York, Department of Labor, Form L0405, verifying under the false and fictitious name of Freddie Jackson that she remained unemployed and entitled to unemployment insurance benefits.

(9) That on and between April 26, 1971 and May 29, 1971, the defendant, ROSA BELL MCLENDON, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, representing unemployment insurance benefits and directed to F. Jackson, 566 Jefferson Avenue, Buffalo, New York, which she endorsed and cashed.

(10) That on or about March 17, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment benefits with the New York State Department of Labor using the false and fictitious name of James Turner, claiming to have worked for Steel City Collision from March 15, 1971, to March 12, 1972.

(11) That on and between March 29, 1972 and April 26, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Unemployment Insurance Fund Form L0406.1 wherein he claimed, using the false and fictitious name of James Turner, that he remained unemployed and entitled to unemployment insurance benefits.

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(12) That on and between April 6, 1972 and May 3, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, various checks representing unemployment insurance fund benefits directed to J. Turner, 173 Northampton Street, Buffalo, New York, which he endorsed and cashed.

(13) That on or about January 20, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment benefits with the New York State Department of Labor using the false and fictitious name of Louis C. Rice, claiming to have worked for Steel City Collision from July 14, 1970 to May 18, 1972.

(14) That on and between January 30, 1972 and February 27, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1 wherein he claimed, using the false and fictitious name of Louis C. Rice, to be unemployed and entitled to unemployment insurance benefits.

(15) That on and between February 8, 1972 and March 3, 1972, the defendant, LOUIS TOLIVER, received via the mails from the State of New York, Unemployment Insurance Fund, various checks representing Unemployment Insurance Fund benefits directed to L. C. Rice, 71 Wilson Street, Lackawanna, New York, which he endorsed and cashed.

(16) That on or about January 20, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment benefits with the

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name of Richard Rice, claiming to have worked for Steel City Collision from September 5, 1970 to January 14, 1972.

(17) That on and between March 19, 1972 and April 16, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund Form LC406.1 wherein he claimed, using the false and fictitious name of Richard Rice, to be unemployed and entitled to unemployment insurance benefits.

(18) That on and between March 27, 1972 and April 24, 1972, the defendant, LOUIS TOLIVER, received via the mails from the State of New York Unemployment Insurance Fund, various checks representing Unemployment Insurance Fund benefits, directed to R. Rice, 3416 Highland Avenue, Niagara Falls, New York, which he endorsed and cashed.

COUNT THREE

The Grand Jury further charges:

That beginning in or about March, 1971 and continuing through June 1, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY, ROSA BELL McCLENDON, and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false and fictitious names, claiming to have worked for Steel City Collision, thereby obtaining the scheme and artifice to defraud, so devised and intended to be devised by the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY, ROSA BELL McCLENDON, and LOUIS TOLIVER, was in substance as follows:

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(a) It was a part of the scheme and artifice that the defendants would claim to have worked for Steel City Collision.

(b) It was a further part of the scheme and artifice that the defendants would verify, by mailing to the New York State Department of Labor, Form L012.11, verifying that the said defendants used various false and fictitious names worked for Steel City Collision.

(c) It was a further part of the scheme and device for the defendants to place and cause to be placed in an authorized depository for mail matter, Form L0400 directed to the New York State Department of Labor verifying entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and artifice that the defendants would cause to be placed in an authorized depository for mail matter checks drawn on the New York State Unemployment Insurance Fund and mailed to them under their real or fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and on or about March 22, 1972, the defendant, GEORGE C. RASBERRY, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11 verifying that one Bill Brown was employed by Steel City Collision between March 15, 1971 and March 12, 1972; all in violation of Title 18, United States Code, 551341 and 2.

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or about March 22, 1972,

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the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11 verifying that one Bill Brown was employed by Steel City Collision between March 15, 1971 and March 12, 1972; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT XXXIX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVIII above, and on and between March 26, 1972 and April 26, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed Form L0406.1 to the New York State Unemployment Insurance Fund wherein he verified using a false and fictitious name of Bill Brown, that he remained unemployed and entitled to unemployment insurance fund benefits; On violation of Title 18, United States Code §§1341 and 2.

COUNT XL

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on and between April 7, 1972 and April 30, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits; in violation of Title 18, United States Code, §§1341 and 2.

COUNT XLI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XVIII above and on or about April 1, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11, verifying under the false and fictitious name of Eugene Skrozyk that one ~~Sebastian Gracka~~ worked for Steel City Collision from March 23, 1970 to March 21, 1971; all in violation of Title 18, United States Code §§1341 and 2.

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COUNT XLII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or about April 1, 1971, in the Western District of New York, the defendant, ROSA BELL McLENDON, mailed and caused to be mailed to the New York State Department of Labor, Form LO12.11, verifying under the false and fictitious name of Eugene Skrozyk that one Freddie Jackson worked for Steel City Collision from March 23, 1970 to March 21, 1971, all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between April 19, 1971 and May 24, 1971, in the Western District of New York, the defendant, ROSA BELL McLENDON mailed and caused to be mailed to the State of New York, Department of Labor, Form LC406, verifying under the false and fictitious name of Freddie Jackson that she remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

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COUNT XLIV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between April 26, 1971 and May 29, 1971, in the Western District of New York, the defendant, ROSA DELL MACLENDON, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund representing unemployment insurance benefits and directed to F. Jackson, 566 Jefferson Avenue, Buffalo, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between March 29, 1972 and April 26, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Insurance Fund Form L0406.1, wherein he claimed, using the false and fictitious name of James Turner, to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLVI

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between

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April 6, 1972 and May 2, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, various checks representing unemployment insurance fund benefits directed to J. Turner, 173 Northampton Street, Buffalo, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLVII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between January 30, 1972 and February 27, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Insurance Fund, Form L0406.1 wherein he claimed, using a false and fictitious name of Louis C. Rice, to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLVIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between [redacted] of New York, the defendant, LOUIS TOLIVER, received, via

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the mails from the State of New York, Unemployment Insurance Fund, various check representing unemployment insurance fund benefits directed to L. C. Rice, 5115 Olcott Street, Lackawanna, New York, and 71 Wilson, Lackawanna, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XXXVII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between March 19, 1972 and April 16, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Insurance Fund, Form L0406.1, wherein he claimed, using a false and fictitious name of Richard Rice, to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT L

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between March 27, 1972 and April 24, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via

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Fund, various checks representing unemployment insurance fund benefits directed to R. Rice, 3416 Hyland Avenue, Niagara Falls, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LI

The Grand Jury Further Charges:

That beginning in or about August, 1972 and continuing through January 1, 1973, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY and LOUIS TOLIVER, did, wilfully, knowingly and unlawfully, combine, conspire and agree together to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Bee Gee Arco Service Station by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

objects thereof, the defendants committed the following overt acts:

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(1) That on or about August 23, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Willie M. Davis, claiming to have worked for Bee Gee Arco Service Station from August 23, 1971 to August 20, 1972.

(2) That on or about August 31, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Johnnie Gray, claiming to have worked for Bee Gee Arco Service Station from August 30, 1971 to August 27, 1972.

(3) That on or about November 3, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of Leroy C. Jefferson, claiming to have worked for Bee Gee's Arco Service Station from November 8, 1971 to November 5, 1972.

(4) That on or about August 28, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of James E. Willis, claiming to have worked for Bee Gee's Arco Service Station

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(5) That on or about September 8, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one Johanna Gray was employed by Bee Gee Arco Service Station, from August 30, 1971 to August 27, 1972.

(6) That on or about November 18, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one Larry Jefferson worked for Bee Gee Arco Service Station from November 8, 1971 to November 5, 1972.

(7) That on or about August 28, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one James E. Willis was employed by Bee Gee Arco Service Station from August 23, 1971 to August 20, 1972.

(8) That on or about October 6, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment insurance benefits with the New York State Department of Labor using a false and fictitious name of Robert J. Owens, claiming to have worked for Bee Gee's Arco Service Station from July 13, 1971, to October 2, 1972.

(9) That on or about September 20, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment insurance with the New York State Department of Labor using the false and fictitious name of John P. Toliver, claiming to have worked for Bee Gee's Arco Service Station from March 18, 1970 to September 21, 1972.

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COUNT LII

The Grand Jury Further Charges:

That beginning on or about August, 1972 and continuing through January 1, 1973, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY and LOUIS TOLIVER, devised and attempted to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for benefits using false and fictitious names claiming to have worked for Bee Gee Arco Service Station, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and attempted to be devised by the defendants, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants would claim to have worked for Bee Gee Arco Service Station under fictitious names.

(b) It was a further part of the scheme and device for the defendants to place and caused to be placed in an authorized depository for mail matter, Form LO 12.11, directed to the New York State Department of Labor, verifying that they, using false and fictitious names, were employed by Bee Gee Arco Service Station.

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(c) It was a further part of the scheme and device for the defendants to place and caused to be placed in an authorized depository for mail matter, Form LO 406 directed to the New York State Department of Labor verifying their entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and device that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and directed to them under false and fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and on September 3, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Johnnie Gray was employed by Bee Gee Arco Service Station; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device in Count LII above, and on November 18, 1972, in the Western District of New York, the defendant, FC Cook New York State Department of Labor, Form LO 12.11 verifying that one Leroy C. Jefferson worked for Bee Gee

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Arco Service Station; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT LIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count LII above, and on and between October 6, 1972 and November 19, 1972 in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the State of New York, Department of Labor, Form L0406.1, verifying under the false and fictitious name of Richard J. Owens that he remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count LII above, and on and between November 1, 1972 and November 24, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, representing unemployment insurance benefits and directed to R. J. Owens, of Title 18, United States Code, §1341 and §2.

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COUNT LVI

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count LII above, and on and between October 29, 1972 and November 26, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed and caused to be mailed to the State of New York, Department of Labor, Form L0406.1, verifying under the false and fictitious name of John T. Toliver that he remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LVII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count LII above, and on and between November 6, 1972 and December 4, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, representing unemployment insurance benefits and directed to J. T. Toliver, 71 B Wilson Street, Lackawanna, New York; all in violation of Title 18, United States Code, §1341 and §2.

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COUNT LVIII

The Grand Jury further charges:

That beginning in or about May, 1971 and continuing through September 1, 1972, in the Western District of New York, the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, did willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to this Grand Jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Almasi's Tavern, a/k/a Fat Daddy's Grill by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

- (1) On or about April 30, 1971, the defendant, MARY JEAN ASKEW, filed a claim for unemployment insurance benefits for the New York State Department of Labor claiming to have worked for Fat Daddy's Bar and Grill, a/k/a Almasi's Tavern from April 27, 1970 to April 15, 1971.

(2) As a result thereof and on and between April 12, 1972 and May 11, 1972, the defendant, MARY JEAN ASKEW, under the false and fictitious name of Margaret Askew, received, via the mails, unemployment insurance fund checks from the State of New York, Unemployment Insurance Fund.

(3) On or about May 27, 1971, the defendant, ROSA BELL McCLENDON, filed with the New York State Department of Labor a claim for benefits under the false and fictitious name of Rosa Belle, claiming to have worked for Fat Daddy's Bar and Grill, a/k/a Almasi's Tavern from May 25, 1970 to May 23, 1971.

(4) On and between January 24, 1972 and April 24, 1972, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Unemployment Insurance Fund Form LO406.1 verifying that she remained unemployed and entitled to unemployment insurance benefits.

(5) On and between January 28, 1972 and April 28, 1972, the defendant, ROSA BELL McCLENDON, received via the mails, from the State of New York, Unemployment Insurance Fund, various checks directed to R. Belle, 64 Olcott Street, Lackawanna, New York, which she endorsed and cashed.

(6) On or about February 2, 1972, the defendant, LOUIS TOLIVER, filed with the New York State Department of Labor, a claim for benefits under the false and fictitious name of Louis Toliver, claiming to have worked for Almasi's Tavern from April 10, 1970 to January 26, 1972.

(7) On and between March 26, 1972 and July 9, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1, verifying that he remained unemployed and entitled to unemployment insurance benefits.

(8) On and between April 3, 1972 and July 14, 1972, the defendant, LOUIS TOLIVER, received via the mails, from the State of New York, Unemployment Insurance Fund, various checks directed to L. Clyburn, 170 Bigelow Place, Depew, New York, which he endorsed and cashed.

COUNT LIX

The Grand Jury further charges:

That beginning in or about May, 1971 and continuing through September 1, 1972, in the Western District of New York, the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for Almasi's Tavern, a/k/a Fat Daddy's Grill, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, would claim to have worked for Almasi's Tavern, a/k/a Fat Daddy's Grill, under real or fictitious names.

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(b) It was a further part of the scheme and device for the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, to place and cause to be placed in an authorized depository for mail matter, Form LO12.11, directed to the New York State Department of Labor, verifying that they, using false and fictitious names, were employed by Almasi's Tavern, a/k/a Fat Daddy's Grill.

(c) It was a further part of the scheme and device for the defendants to place and cause to be placed in an authorized depository for mail matter, Form LO406 directed to the New York State Department of Labor verifying their entitlement to New York State Unemployment Insurance benefits.

(d) It was a further part of the scheme and device that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and directed to them under false and fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and between April 12, 1972 and May 11, 1972, the defendant, MARY JEAN ASKEW, caused to be deposited in an authorized depository for mail matter, various checks representing unemployment insurance funds from the State of New York, Unemployment Insurance Fund and directed to her under the false and fictitious name of Margaret Askew; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT LX

That in furtherance of the scheme, artifice and device as set forth in Count LIX, above, and on and between January 24, 1972 and April 28, 1972, in the

Western District of New York, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1 verifying that she remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LIX, above, and between January 20, 1972 and April 28, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, caused to be placed in an authorized depository for mail matter, checks drawn on the State of New York, Unemployment Insurance Fund and directed to her under the false and fictitious name of R. Belle at 64 Olcott Street, Lackawanna, New York; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LIX, above, and on and between March 26, 1972 and July 9, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1, verifying, using the false and fictitious name of Louis Clyburn, that he remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

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COUNT LXIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LIX, above, and on and between April 3, 1972 and July 14, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, caused to be placed in an authorized depository for mail matter, various checks drawn on the State of New York, Unemployment Insurance Fund and directed to him under the false and fictitious name of L. Clyburn; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXIV

The Grand Jury further charges:

That beginning in or about July, 1971 and continuing through August 3, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, KATE LEE COOK, ROSA BELL McCLENDON, and LOUIS TOLIVER, did willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to this Grand Jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Charlie's Sunoco Station by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

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OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) On or about July 22, 1971, the defendant, ELGIN C. COOK, filed a claim for unemployment benefits with the State of New York, Department of Labor, claiming to have worked for Charlie's Sunoco Station from March, 1971 to May, 1971.

(2) On and between September 22, 1971 and May 12, 1972, as a result of the aforesaid claim, the defendant, ELGIN C. COOK, received, via the mails from the State of New York, Unemployment Insurance Fund, various checks addressed to E. C. Cook, 379 Emslie Street, Buffalo, New York.

(3) On or about November 29, 1971, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the State of New York, Department of Labor, claiming to have worked for Charlie's Sunoco Station from November 30, 1970 to November 28, 1971, under the false and fictitious name of Edward C. Cook residing at 64 Olcott Street, Lackawanna, New York.

(4) On and between December 21, 1971 and July 18, 1972, the defendant, ELGIN C. COOK, using the false and fictitious name of Edward C. Cook, caused to be deposited in an authorized depository for mail matter, Form LO406.1, directed to the New York State Department of Labor, which stated that he was claiming to be unemployed and eligible for New York State unemployment insurance benefits.

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(5) On and between December 27, 1971 and July 24, 1972, the defendant, ELGIN C. COOK, received via the mails, various checks drawn upon the State of New York, Unemployment Insurance Fund and mailed to him under the name of E. C. Cook, 64 Olcott Street, Lackawanna, New York from Albany, New York.

(6) That the said checks were endorsed by the defendant, ELGIN C. COOK, in his own name or in false and fictitious names and cashed by him.

(7) On or about November 18, 1971, the defendant, ELGIN C. COOK, filed a claim with the New York State Department of Labor for unemployment insurance benefits under the false and fictitious name of Torre L. Mitchell, claiming to have worked for Charlie's Sunoco Station from November 16, 1970 to November 14, 1971.

(8) On or about January 5, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Johnnie M. Clark, claiming to have worked for Charlie's Sunoco Station from January 4, 1971 to January 2, 1972.

(9) That as a result of the claims as aforesaid, the defendant, ELGIN C. COOK, received, via the mails, various unemployment insurance checks drawn upon the State of New York, Unemployment Insurance Fund and directed to him under the false and fictitious names of Torre L. Mitchell and Johnnie M. Clark between January 24, 1972 and August 9, 1972.

(10) That New York State Unemployment Insurance check dated March 10, 1972 made payable to E. C. Cook was endorsed by the defendant, ROSA BELL McCLENDON.

(11) That New York State Unemployment Insurance check dated January 27, 1972 payable to E. C. Cook was endorsed by the defendant, ROSA BELL McLENDON.

(12) That New York State Unemployment Insurance check dated September 27, 1971 payable to E. C. Cook was endorsed by the defendant, KATE LEE COOK.

(13) That New York State Unemployment Insurance check dated October 4, 1971 payable to E. C. Cook was endorsed by the defendant, KATE LEE COOK.

(14) On or about January 1, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment insurance benefits with the State of New York, Department of Labor, claiming to have worked for Charlie's Sunoco Station from March 27, 1971 to December 16, 1971, under the false and fictitious name of James Cole.

(15) On and between January 9, 1972 and May 14, 1972, the defendant, LOUIS TOLIVER, using the false and fictitious name of James Cole, caused to be deposited in an authorized depository for mail matter, Form LO406.1, directed to the New York State Department of Labor, verifying that he continued to be unemployed and eligible for New York State unemployment insurance benefits.

(16) On and between January 2, 1972 and May 18, 1972, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn upon the State of New York, Unemployment Insurance Fund, and mailed to him under the false and fictitious name of J. Cole, 374 Madison Street, Buffalo, New York.

(17) That the said checks were endorsed by the defendant, LOUIS TOLIVER, in the false and fictitious name of J. Cole and cashed by him.

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COUNT ~~IV~~

The Grand Jury further charges:

That beginning in or about July, 1971 and continuing through August 3, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, KATE LEE COOK, ROSA BELL McCLENDON, and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false and fictitious names and bonafide names, claiming to have worked for Charlie's Sunoco Station, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, ELGIN C. COOK, KATE LEE COOK, ROSA BELL McCLENDON, and LOUIS TOLIVER, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendant, ELGIN C. COOK, would claim to have worked for Charlie's Sunoco Station under the false and fictitious names of Edward C. Cook, Toree L. Mitchell and Johnnie M. Clark, as well as in his own name.

(b) It was a further part of the scheme and device for the defendants, ELGIN C. COOK, KATE LEE COOK and ROSA BELL McCLENDON, to place and cause to be placed in an authorized depository for mail matter, Form LO12.11, directed to the New York State Department of Labor, verifying that the defendant, ELGIN C. COOK, using false and fictitious names, was employed by Charlie's Sunoco Station.

(c) It was a further part of the scheme and device for the defendants to place and cause to be placed

in an authorized depository for mail matter, Form LO406 directed to the New York State Department of Labor, verifying the entitlement of the fictitious named employees to New York State Unemployment Insurance benefits.

(d) It was a further part of the scheme and device that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and directed to them under various false and fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and between July 22, 1971 and August 3, 1972, the defendant, ELGIN C. COOK, caused to be placed in an authorized depository for mail matter, numerous checks drawn on the New York State Unemployment Insurance Fund and made payable to the various defendants under the false and fictitious names of Edward C. Cook, Johnnie M. Clark and Torre L. Mitchell, some of which checks were endorsed by the defendants, ~~ROSA BELL McCLENDON and KATE LEE COOK;~~ all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXVI

The Grand Jury further charges:

That in furtherance of a scheme, artifice and device as set forth in Count LXV above, and between January 9, 1972 and May 14, 1972, in the Western District of New York, the defendant, ~~ROSA BELL McCLENDON~~, caused to be mailed to the New York State Department of Labor, Form LO406.1, verifying under the false and fictitious name of James Cole, that he continued to be unemployed and entitled to unemployment insurance benefits, all in violation of Title 18, U.S.C., §§1341 and 2.

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COUNT LXVII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LXV above, and on and between January 2, 1972 and May 18, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment insurance benefits checks addressed to J. Cole, at 374 Madison Street, Buffalo, New York; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT LXVIII

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing to December 11, 1972, in the Western District of New York, the defendants, ELGIN C. COOK and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits by the use of false and fictitious names, claiming to have worked for Dickson's Sunoco Station, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendant was in substance as follows:

(a) It was a part of the scheme and artifice that the defendant, ELGIN C. COOK, claimed to have worked for Dickson's Sunoco Station under the false and fictitious names of Jim Hooker, Terry Rogers, Arthur Ward and Carl Collier.

(b) It was a further part of the scheme and artifice that the defendant, ELGIN C. COOK, would verify, by mailing to the New York State Department of Labor, Form LO12.11, verifying, falsely and fictitiously as the owner of Dickson's Sunoco Station, that the above-named fictitious persons worked for him.

(c) It was a further part of the scheme and artifice for the defendants, ELGIN C. COOK and LOUIS TOLIVER, under the false and fictitious names as aforesaid, to place and cause to be placed in an authorized depository for mail matter, Form LO406, directed to the New York State Department of Labor, verifying entitlement to New York State unemployment insurance benefits.

(d) . It was a further part of the scheme and artifice that the defendants, ELGIN C. COOK and LOUIS TOLIVER, would cause to be placed in an authorized depository for mail matter, checks drawn upon the New York State Unemployment Insurance Fund and mailed to him under the fictitious names aforesaid.

That for the purpose of executing the aforesaid scheme and artifice and on and between September 16, 1972 and December 11, 1972, the defendant, ELGIN C. COOK, caused to be deposited in an authorized depository for mail matter, various checks drawn on the New York State Unemployment Insurance Fund mailed from Albany, New York to him under the fictitious names as aforesaid; all in violation of Title 18, U.S.C., §1341.

~~Excluded~~
The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count 68 ,above, and on and between October 29, 1972 and December 3, 1972, in the

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Western District of New York, the defendant, LOUIS TOLIVER, placed or caused to be placed in an authorized depository for mail matter, Form LO406.1, directed to the New York State Department of Labor, verifying under the false and fictitious name of Terry Rogers, that he was unemployed and continued to be entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count 63, above, and between November 3, 1972 and December 3, 1972, the defendant, LOUIS TOLIVER, caused to be deposited in an authorized depository for mail matter, various checks drawn on the New York State Unemployment Insurance Fund, mailed from Albany, New York and directed to him, under the false and fictitious name of Terry Rogers; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXXI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count 63, above, and between September 16, 1972 and December 11, 1972, in the Western District of New York, the defendant, ELGIN C. COCK, for the purpose of conducting, promoting and carrying on by means of the United States Postal Service the aforesaid scheme and device to defraud and

for obtaining money and property by means of such false and fraudulent pretenses, representations and promises, did use and assume the fictitious, false and assumed names of Jim Hoeker, Terry Rogers, Arthur Ward and Carl Collier; all in violation of Title 18, United States Code, §1342.

JOHN T. ELVIN
United States Attorney

A TRUE BILL:

Richard S. Schuman
Foreman

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO)

ss.:

Doreen Valyear, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age and
resides at Kenmore, New York.

On April 28, 1976, deponent served ^{2 COPIES OF} the within Brief and Appendix
of Defendant-Appellant, on Appeal from Judgment of Conviction, upon
Roger Williams, Assistant United States Attorney, attorney for the
Plaintiff in this action, at United States Courthouse, Buffalo, New
York, the address designated by said attorney for that purpose, by
depositing two true copies of same, enclosed in a post-paid properly
addressed wrapper in an official depository under the exclusive care
and custody of the United States Postal Service within the State of
New York.

Doreen Valyear

Sworn to before me this
28th day of April, 1976

David Gerald Jay
DAVID GERALD JAY
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977